IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRL.A.No. 522 of 2002()

ST.1563/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR DT..29.6.2001,
SPECIAL LEAVE TO APPEAL GRANTED IN CRL.MC. 5842/02 DT. 2.7.02.

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APPELLANT: COMPLAINANT

JOSE NELLANGARA,AGED 39 YEARS,
PROPRIETOR,PALATTE ADVERTISING COMPANY,
VIMALA BUILDING,NICE BAZAR,THRISSUR.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: ACCUSED AND STATE
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1. **VISWAKAMASWARAMANI,AGED 49 YEARS,**
   KALYAMAYOGAM BUREAU,K.R.P.LODGE,ROOM NO.14F,
   POST OFFICE ROAD,THRISSUR

2. **STATE OF KERALA,REPRESENTED BY**
   PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM

BY ADV. SRI.U.RAVISANKAR
SRI.PEARLY JOSE
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/ 07 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. A. No.522 of 2002

Dated 4th July, 2007

Judgment

Appellant is the complainant in S.T.No.1563/98 with respect to the offence under section 138 N.I Act which stands dismissed and the accused acquitted. The case of the complainant is that he had issued 4 cheques for a sum of Rs.15,000/- each including the impugned cheque dated 28-1-98 towards the discharge of amounts due towards advertisement charges of Rs.2,26,109/-. The cheque was dishonoured on account of insufficiency of funds in the account of the accused.

2. There was no representation for the accused/respondent.

3. The evidence adduced in the matter consisted of the testimony of the testimony of PWs 1 and 2 and Exts.P1 to P8. The defence got marked Ext.D1 through PW-1.

4. The trial court has observed that it is admitted by PW-1 that Ext.D1 account book maintained by the accused

related to the accounts with respect to the advertisements executed through the complainant and that the above account book will show the amounts periodically paid towards advertisement charges. It is also mentioned that there is writing in Ext.D1 as 15 x 4, but the same is hardly sufficient to prove the issuance of the impugned cheque, according to the court below. The court has found fault with the complainant in not producing the account books kept in the complainant's company with respect to the advertisement made and the amount due. It is submitted by the counsel for the appellant that the court below has not properly appreciated the evidence adduced in the matter. It is pointed out that Ext.P7 reply notice is not specific as to the amounts due. The case set up is that the cheques were issued as security for the advertisements to be effected and on the understanding that the cheques will not be presented and that the same will be discounted, towards the amounts due. In the reply notice, it is only mentioned that on return of the cheque, the amount can be

taken in cash from the office of the accused. It is pointed out that Ext.D1 contained no entry regarding payment effected to the complainant or his signature.

6. I find that there is no dispute as to the execution of the cheque. Counsel for the appellant has sought for an opportunity so that he can produce the relevant accounts before the court. In the circumstances, I find that the matter requires reconsideration. The matter is remitted to the court below for fresh consideration after permitting the parties to adduce any further evidence if so they desire.

The Crl.appeal is disposed of accordingly.

The parties shall appear before the court below on 6-8-2007.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. 522 OF 2002

JUDGMENT

4-7-2007.